



## MEMORANDUM

**TO:** Mayor and City Council

**FROM:** Howard Lazarus, PE, Director, Public Works Department

**SUBJECT:** Green Water Treatment Plant Deconstruction Project  
Status of Stop Work Order and Cure Notice

**DATE:** 1/21/2010

**CC:** M Ott, R Goode, R Garza, G Meszaros, G Bowman, K Juarez, C Jordan

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**PURPOSE:** I'm forwarding this memorandum to provide a status update on the Stop Work Order and Cure Notice issued to the prime contractor, Austin Filter Systems, on the Green Water Treatment Plan Deconstruction Project (the "Green Project").

**BACKGROUND:** Austin Filter Systems (AFS), the prime contractor, has had consistent problems in controlling the safety environment on the Green Project, including the activities of its subcontractors. These contract breaches have been documented and communicated to AFS. On December 2, 2009, I signed and sent an "Owner's Notice to Cure Anticipatory Breach of Contract and to Demand Meeting with Surety and Contractor" to Austin Filter Systems (AFS) and its surety concerning the repeated pattern of unsafe work practices that the City's representative continued to observe on the project. On December 2<sup>nd</sup> and on December 4<sup>th</sup>, subsequent serious safety violations were observed and, after consulting with in-house counsel, I signed a "Stop Work Order and Demand for Meeting with Surety and Contractor."

The December 2<sup>nd</sup> Cure Notice established the following eight criteria AFS had to comply to cure its contract breaches:

- provide a Corrective Action Plan;
- provide copies of the Contractor's and all Subcontractors' employee safety handbooks;
- provide significant additional safety resources;
- provide worker safety classes;
- provide a responsible Superintendent and Safety Representative on site;
- provide adequate written protocols, procedures, and assurances;
- provide for the removal of Subcontractors involved in the breaches as required by the Contract Documents; and

- implement other measures acceptable to the City.

The letter further specified AFS had to come into compliance not later than December 18<sup>th</sup> or the City would consider “all of its rights and remedies as specified in the Contract Documents and under Texas Law” including potential termination of the agreement.

City representatives met with AFS and its counsel and surety on December 18<sup>th</sup> to review the status of the corrective actions being implemented. At that time the City agreed to extend the cure period through January 11, 2010. A subsequent meeting was held on January 11<sup>th</sup>, with AFS reporting the following progress:

- a new Superintendent had been hired and an offer made to a replacement Safety Representative;
- bids had been received from replacement subcontractors and AFS would forward the selected bid to the City for review;
- per the City’s direction, work on stream bank restoration had been completed;
- a revised work plan and safety procedures were being prepared.

At the meeting, the City expressed its concern that the cure actions be completed as quickly as possible. AFS projected that work could resume by the end of January with the City’s concurrence. Both sides agreed to meet again on or about January 28<sup>th</sup> extending the cure period through that date.

**NEXT STEPS:** Upon approval of the remaining actions and AFS’ entering into an agreement with an acceptable subcontractor, the City will lift the stop work order and allow all work to resume. At its January 28<sup>th</sup> meeting, Council will consider a resolution to amend the professional services agreement with URS that will allow URS to continue to provide construction phase services, including safety inspection.

Council Members may reasonably anticipate that they will be approached in the coming week by AFS’ removed subcontractors or that representatives of the removed subcontractors may sign up to speak at the Council meeting. Council Members should also be aware that one of the subcontractors has indicated its intention to file claim against the City.

Please do not hesitate to contact me directly if you have any question or if you need additional information.